

January 23, 1976

SENATOR MURPHY: Now I would move to return the bill to Select File for the specific amendment. The amendment being to correct and alter the amendment that has just been adopted. I say "correct" because I don't believe that amendment, which specifies that service shall be made to the defendants attorney when we're dealing in a small claims court in which there might be no attorney and there is no other reference to whom it might be delivered, I think the amendment itself is in error.

Specifically, the amendment I have would go along with the initial amendment that Senator Chambers offered which was to eliminate the postcard for reasons of privacy and to make service by first class mail. However, not only are we closing all our post offices so we won't have anyone to make personal service as required in certified mail, but more specifically if this service cannot be made and certification obtained what becomes of the case? It lays there incapable of enforcement because service has not been made as required. I say if we're going to make small claims court something that can be used easily by an individual then, certainly, we've got to keep the procedures minimal. Therefore, I would suggest that we make service by first class mail, as set forth in the amendment, to the last known address of the individual or someone representing him. Thereafter the judgement can be proceeded with and not just held in court waiting forever for a signature.

I think we have a very complicated amendment that resulted on the floor. I hope this would correct it. I move the adoption of the amendment. Excuse me. I move the return of the bill.

PRESIDENT: Alright. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, I want to clarify something. I'd like to ask Senator Murphy a question first. Senator Murphy, did you draft this amendment, or did the Bar Association draft it?

SENATOR MURPHY: I'm not sure the Association did, Senator Chambers. An attorney did give me the corrected amendment, yes sir.

SENATOR CHAMBERS: Was he representing the Bar Association? Was he their legislative representative?

SENATOR MURPHY: Yes, I believe he is.

SENATOR CHAMBERS: Thank you Senator Murphy. Members of the Legislature, if you'll look at the original bill you'll see that the section dealing with the small claims court is 24-524. You'll see that the section of the amendment adopted on the floor deals with is 24-537 and it does not deal, Senator Murphy, with the small claims court. It is a general provision of law relating to notice after judgement. So in any action.... It's not related to small claims court. The attorney either did not read the amendment correctly, or he just listened to the debate and didn't realize that a general section relating to notice is being dealt with. As a non-attorney I should not be in a position to correct an attorney, but that's what, unfortunately, has to be done this morning.